

IN AND FOR KENT COUNTY  
COURT NO. 16

TONY BELL,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	Civil Action No. JP16-23-001890
	)	
	)	
DANA FICHERA,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

TRIAL DE NOVO

Submitted: July 7, 2023  
Decision Issued: August 9, 2023

APPEARANCES:

Dana Fichera, Pro Se  
Kate Workman, Esquire, Community Legal Aid Society, on behalf of Tony Bell

THREE JUDGE PANEL:

Alan Davis, Chief Magistrate  
Nicole Alston-Jackson, Justice of the Peace  
Alex Montano, Justice of the Peace

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JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
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ORDER ON TRIAL DE NOVO

Dana Fichera (Fichera), an individual landlord, brings an action for summary possession in this Court against Tony Bell (Bell). Following an evidentiary hearing on May 18, 2023, a single Justice of the Peace awarded Fichera summary possession. Bell subsequently appealed the order of possession to a three-judge panel in accordance with 25 *Del. C.* § 5717.

This is the decision of the three-judge panel and the judgment of the Court following a trial *de novo* held on July 7, 2023, by Zoom videoconference. Upon consideration of the evidence and arguments of the parties, the Court finds the eviction action constitutes unlawful disability discrimination under the State and Federal Fair Housing Acts, and the complaint is hereby dismissed.

Relevant Facts and Procedural History

Based upon the record and evidence presented at trial, the Court finds as follows:

Bell testified he is diagnosed with schizoaffective disorder, bipolar type, and post-traumatic stress disorder (PTSD). Bell described how these conditions impair his communication skills, causing him sensitivity to loud noises, and stress and anxiety when he is around a lot of people. Bell has struggled to maintain a job since his diagnosis, is currently unemployed, and on a fixed income. Bell testified on his own behalf, and did not present additional evidence related to his mental disability.

Bell is also an experienced dog owner. Bell owned dogs for about eleven years, and trained dogs professionally for five to six years. Bell has prior experience training dogs for other people.

On or about May 1, 2022, Bell entered into a lease agreement with Fichera for rental of the property located at 829A Culbreath Street, Smyrna, Delaware. Fichera resides in New Jersey, and her local property manager, Charles Shavio (Shavio) handled most of the in-person communication with Bell related to the lease and the dogs. Shavio met with Bell when the lease was signed in May 2022.

When Fichera rented the property to Bell, she knew he had a mental disability, and she regarded him as having a disability. Fichera testified she was aware of Bell's mental disabilities "from the beginning". Fichera also knew Bell was a dog owner and had at least one dog when he moved into the property.

The lease contains a singular provision pertaining to dogs and Bell's responsibility as a tenant. It states, "animal permits, along with all State and county laws applicable to pets must be observed at all times". The lease does not limit the number of dogs Bell can have, nor does it address Bell's dog training responsibilities.

The Court took judicial notice Delaware law requires all dogs six months of age or older to be licensed by their owners as outlined in 16 *Del. C.* § 3042F. A two-year license is \$20 for one dog, and a one-year kennel license is \$70 for up to twelve dogs. Minimal fees may apply for late applications.

As the property manager, Shavio told Bell the dogs must be licensed under the lease. Shavio also told Bell he cannot operate a kennel and sell puppies from the property. Shavio informed Bell verbally of the restrictions, but there is no record evidence Shavio provided Bell with written notice.

Fichera also communicated with Bell about the dogs, and asked for proof the dogs were licensed. Fichera claims Bell was often non-responsive and provided her with inaccurate and misleading information related to the dog licenses. Fichera also told Bell he has too many dogs on the property, and is not permitted to operate a kennel. Fichera referred to Bell as having "mental disabilities" and characterized him as "dangerous" when he is off his medication. Fichera testified she is very nervous Bell is off his medicine and raising dogs.

Bell acknowledged he owns dogs without Delaware dog licenses. Bell testified his dogs were licensed when he previously resided in Maryland. Bell currently has three adult dogs and is caring for an unexpected litter of puppies. Bell keeps the dogs in various kennels throughout the property to separate the dogs as needed, and to permit the puppies space to be with the mother. Bell testified his dogs are not violent or aggressive, and he has not ordered his dogs to attack anyone. Bell testified he recently met with a Delaware animal control officer on the property and understands he can obtain an individual dog license or a kennel license. Bell is on a fixed income and described how he uses his funds for dog food, puppy formula, straw for the kennels, bedding for the dogs, and other items. Bell testified, in general, he needs more time to acquire the funds to pay for the dog licenses.

Fichera claims Bell's non-licensure of the dogs is a material breach of the lease warranting eviction. Under 25 *Del. C.* § 5513(a), a landlord must give the tenant written notice of the specific lease provision violated and at least 7 days to cure the breach. On December 5, 2022, Fichera served Bell with the 7 Day Notice under 25 *Del. C.* § 5513(a) alleging noncompliance with the lease on the grounds Bell failed to obtain licensing for his dogs.

Fichera subsequently sent Bell a 60-day notice of non-renewal dated March 1, 2023 advising him the lease expires on May 1, 2023 and he must vacate the property by that date.

On March 7, 2023, Fichera also filed a complaint with the Court seeking Bell's eviction.

### Complaint Allegations

Fichera's complaint significantly exceeds the scope of the noncompliance alleged in the 7 Day Notice to Bell (i.e., dog licenses). Fichera also explicitly refers to Bell's mental disability as a basis for the Court to award summary possession. In relevant part, the complaint alleges Bell's noncompliance by:

- (1) Permitting his girlfriend to live on the property when not authorized.
- (2) Having too many dogs on the property and operating a dog kennel.
- (3) Training attack dogs and creating risk to others.
- (4) Failing to verify his dogs are licensed by the State of Delaware.
- (5) Being disabled and taking prescription psychotic medication for mental issues that place other people at risk.

Subsequent to the filing of the complaint, Bell's attorney sent Fichera a letter stating Bell has a disability and is protected by the Delaware Fair Housing Act. In the May 10, 2023 letter, Bell's attorney requested Fichera provide a reasonable accommodation and allow Bell more time to license his dogs as Bell does not have the financial resources to pay the fees and struggles to hold a job due to his PTSD.

In response, Fichera stated she would not even consider such a "ridiculous request". In a May 17, 2023 letter to Bell's attorney, Fichera described Bell as being on "serious medication in order to control his psychotic behavior" and being an "infected person" removed from reality.

### Discussion

The Court will examine Fichera's claims and the defenses raised by Bell. In doing so, the Court notes it considered all the evidence in the record. If specific testimony is omitted from reference in the Court's decision, the Court found it lacking in credibility and/or relevance. The Court also considered all arguments submitted by the parties. To the extent the arguments of the parties are in accordance with the Court's findings and conclusions, the arguments were accepted. To the extent they are inconsistent with the Court's findings and conclusions, the arguments were rejected.

### Fichera Failed to Provide Required Notice for Lease Violations

Fichera seeks an order of summary possession on the grounds Bell violated the lease by: (1) permitting his girlfriend to move in; (2) having too many dogs on the property; (3) operating a dog kennel; and (4) training his dogs to attack people resulting in risk to others. The Court notes Fichera provided no credible evidence at trial to support these allegations. But in addition, Fichera was required by 25 *Del. C.* § 5513(a) to provide written notice to Bell of the alleged violations to pursue a subsequent action for summary possession. Fichera failed to provide the required notice, and is barred from pursuing an eviction order based upon these allegations.

### The Lease Required Bell to License his Dogs

Fichera also seeks summary possession on the grounds Bell failed to acquire licensing for his dogs through the State of Delaware in violation of the lease. The Court finds it reasonable for Fichera to

require Bell to license his dogs as a condition of the lease. It is also reasonable for Fichera to request verification from Bell he licensed his dogs. These measures ensure Bell complies with legal responsibilities concerning pet ownership and responsibly addresses public safety concerns. In addition, Fichera complied with 25 *Del. C.* § 5513 by notifying Bell he was in breach of the lease for the failure to obtain the dog licenses.

The Court is also convinced Bell knew what was expected of him under the lease. Bell is an experienced dog trainer, and established licensing for his dogs when he was a Maryland resident, as well as registrations with the American Kennel and United Kennel Clubs. Bell's own testimony indicates he was aware of his responsibility to license his dogs under Delaware law and knew the process to follow.

#### Bell's Failure to Accommodate Claim Fails

In his defense, Bell asserts the protections of 42 *U.S.C.* § 3604(f)(3)(B) and 6 *Del. C.* § 4603A(a)(2), referred to collectively as "the Fair Housing Acts". Bell contends, despite the licensure requirement, Fichera is obligated to make reasonable accommodation for his mental disability as it allegedly limits his ability to hold a job. The reasonable accommodation, Bell claims, is giving him more time to acquire financial resources to pay for the dog licenses.

Bell has a valid claim to the protections of the Fair Housing Acts as a defense to the eviction action. *See, Kravis v. Justice of the Peace Court*, 2023 WL 2975136 (Del.) Under the Fair Housing Acts, discrimination includes a landlord's refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. *See*, 42 *U.S.C.* § 3604(f)(3)(B) and 6 *Del. C.* § 4603A(a)(2).

To establish a failure to accommodate defense, Bell must demonstrate: (1) he suffers from a disability; (2) the landlord knew or should have known of the disability; (3) an accommodation of the disability is necessary to afford him an equal opportunity to use and enjoy the dwelling; (4) he requested a reasonable accommodation; and (5) the landlord refused to grant the reasonable accommodation. *See, Douglas v. Kriegsfeld Corporation*, 884 A.2d 1109, 1129 (D.C. 2005).

In this case, it is undisputed Bell suffers from a disability and Fichera regarded him as having a disability. A "person with a disability" means any person who: (a) has a physical or mental impairment which substantially limits one or more major life activities; (b) has a record of such impairment; or (c) is regarded as having such an impairment. *See*, 42 *U.S.C.* § 3602(h) and 6 *Del. C.* § 4602(10) referencing 6 *Del. C.* § 4502(18). Fichera explicitly describes Bell as a disabled person in the complaint, and referred to his disability status throughout her testimony.

While Bell is a tenant with a disability entitled to the protections of the Fair Housing Acts, Bell has not established his request for accommodation was reasonable. The record indicates Bell had more than fourteen months from the date of the lease (May 2022) through the date of trial (July 2023) to acquire licensing for his dogs. To the extent Bell requests "more time to acquire financial resources" as an accommodation, he has failed to show with specificity the correlation between his request and the individual circumstances of his disability. Bell's own testimony demonstrates he manages his funds adequately to provide care for multiple dogs and is not impaired by disability related circumstances in

doing so. An accommodation based solely on the financial circumstances of a person with a disability is not a reasonable accommodation under the Fair Housing Act. *See, Salute v. Stratford Greens Apartments*, 136 F.3d 293 (2d Cir. 1998). For these reasons, the Court finds Bell's request for accommodation is not reasonable, and consequently, Fichera had no duty to grant it.

The Court notes if Bell's failure to accommodate claim was his only defense, Fichera would have been entitled to summary possession. However, Bell raises an additional defense contending his disability was an impermissible, motivating factor in the eviction action warranting dismissal of the complaint. The Court agrees.

#### Bell's Disparate Treatment Claim is Proven

The Fair Housing Acts prohibit discrimination against any person in the rental of a dwelling, or in the "terms, conditions, or privileges" of a rental dwelling because of the person's disability. *See*, 42 U.S.C. § 3604(f) and 6 Del. C. § 4603(b). To establish unlawful discrimination, the person must demonstrate some discriminatory purpose was a "motivating factor" behind the challenged action. *431 East Palisade Avenue Real Estate, LLC v. City of Englewood*, 977 F.3d 277, 284 (3d Cir. 2020). The discriminatory purpose need not be malicious or invidious, nor need it figure in "solely, primarily, or even predominantly" into the motivation behind the challenged action. *Community Services, Inc. v. Wind Gap Municipal Authority*, 421 F.3d 170, 177 (3d Cir. 2005).

In this case, the record is replete with evidence Bell's mental disability was a motivating factor in the summary possession action. Fichera explicitly refers to Bell's mental disability as a basis for the Court to award summary possession. In the complaint, Fichera requests summary possession because Bell is "disabled by the State of Delaware" and "taking prescription psychotic medication for mental issues". Fichera characterizes Bell as a "man on prescription medication to prevent psychotic behavior" who is training "150-pound attack dogs". Fichera refers to Bell being "on prescription medication" and suggests if he forgets to take his pills or become confused, his attack dogs may harm, maim, or kill another person. The discriminatory language used by Fichera in the complaint and her negative references to Bell's disability throughout the entirety of the record demonstrates discriminatory motive on the grounds of Bell's disability. Fichera's portrayal of Bell as dangerous and threatening is unfounded, especially as it involves Fichera's repeated reference to Bell's disability. The Court recognizes Fichera's action was not driven solely by malicious intent. But, the Court is convinced Bell's disability played an impermissible and motivating role in Fichera's decision to evict Bell, resulting in unlawful disability discrimination under the Fair Housing Acts.

#### 60 Day Notice Regarding Non-Renewal of Lease Not Given

Finally, 25 Del. C. § 5106(d) requires a landlord to provide a minimum of 60 days notice to a tenant prior to terminating a lease when the rental agreement is month to month. On March 1, 2023, Fichera sent Bell a 60-day notice advising him the lease would not be renewed and expires on May 1, 2023. To the extent Fichera seeks the Court's intervention to evict Bell on this basis, Fichera did not wait the required 60 days before filing the summary possession action. On these additional grounds, the request for possession is denied.

1. The eviction action constitutes unlawful disability discrimination under the State and Federal Fair Housing Acts.
2. The complaint is hereby DISMISSED without prejudice.
3. CLASI's Motion to Dismiss the Complaint filed on behalf of Bell is GRANTED for the reasons stated in this decision.<sup>1</sup>

It is SO ORDERED this 9<sup>th</sup> day of August, 2023.

\_\_\_\_\_/S/ Alan Davis\_\_\_\_\_  
Chief Magistrate Alan Davis  
for the Three Judge Panel



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

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<sup>1</sup> CLASI filed a Motion to Dismiss less than 24 hours prior to the July 7, 2023 trial. As a result, the Court declined ruling and gave Fichera an opportunity to respond. Fichera subsequently filed a response to CLASI's Motion to Dismiss on July 24, 2023 and attached photographs and various documents. The Court has considered Fichera's response, but the photographs and documents are not in evidence as they were not presented at trial or otherwise authenticated.

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